



March 17, 2021

United States Environmental Protection Agency
Region 1
Attn: Damien Houlihan, Chief, Industrial Permits Section
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RE: Application for Blue Water Fisheries, LLC
NH0001620

Sent Only Via Email to Ms. Marian Spahn at spahn.marian@epa.gov as directed

Mr. Houlihan,

I am in receipt of your letter dated February 22, 2021 for which I thank you. Blue Water Fisheries, LLC (BWF) hereby response to your comments as follows:

Form 1 (Question 1):

COMMENT: Part 1.2.3 – As we understand, Blue Water Fisheries is a new manufacturing, commercial, mining, or silvicultural facility that has not yet commenced to discharge [process wastewater]. You are required to check “Yes” and Complete Form 2D in addition to Form 2B (at Part 1.2.1).

RESPONSE: For the reasons set forth in BWF’s response to Question Number Three below, BWF properly checked “No” as its response to Part 1.2.3 on EPA Form 3510-1 (3-19).

Form 1 (Question 2):

COMMENT: Part 11.2 - NPDES applications must be signed by a certifying official in compliance with 40 CFR § 122.22. Please confirm that the signatory identified as “Member” meets the regulatory requirements for a certifying official. (Also applies to Form 2B Part 8.2 and Form 2D Part 10.2).

RESPONSE: BWF is a registered New Hampshire Limited Liability Company (LLC). The application was signed by me as a “member” of the LLC as New Hampshire law

defines my interest in the LLC to be that of a “member”.¹ I have reviewed the provisions of 40 C.F.R. § 122.22 and find that it is silent as to how an application submitted by a LLC should be executed. Subsection (a)(1) addresses corporate applicants, subsection (a)(2) addresses partnerships and sole proprietorships and subsection (a)(3) addresses municipalities, state, federal or other public entities. I have executed all the applications in my legal capacity as a “member” of BWF as defined by the State of New Hampshire. With this said, I welcome direction from the USEPA on how it would like me to execute USEPA Form 3010-1 on behalf of the LLC if the “member” capacity designation is not sufficient. I am also willing to review whatever regulatory citation you offer in support your response.

Form 2D (Question 3):

COMMENT: You are required to submit Form 2D – New Manufacturing, Commercial, Mining, and Silvicultural Operations That Have Not Yet Commenced Discharge of Process Wastewater.

RESPONSE: For the following reasons, I believe that there may be a misunderstanding regarding the applicability of EPA Form 3510-2D to BWF’s application.

EPA Form 3510-1 (8-90) states as Specific Question B “[d]oes or will this facility (either existing or proposed) include a concentrated animal feeding operation or aquatic animal production facility from which results in a discharge to waters of the U.S.? (Form 2B)”.

EPA Form 3510-1 (8-90)(Specific Question B). The answer to this question is in the affirmative as BWF’s operation falls under the definition of an “aquatic animal production facility from which results in a discharge to waters of the U.S.” USEPA, Application Form 1, General Information, NPDES Permitting Program, Glossary, Page 1-10.

Specific Question D then inquires “[i]s this proposed facility (other than those described in A or B above) which will result in a discharge to waters of the U.S.? (Form 2D).” EPA Form 3510-1 (8-90)(Specific Question D). The answer to this question is in the negative as an “aquatic animal production facility from which results in a discharge to waters of the U.S.”, as set forth in Specific Question B, is exempt from the filing requirement of

¹ Under the law, a person who is a part owner of a corporation is a “shareholder” and a person who is part owner of a LLC is known as a “member”.

EPA Form 3510-2D by the specific language of EPA Form 3510-1 (8-90)(Specific Question D).²

Further, I have reviewed the regulations that underpin EPA Form 3510-1, 3510-2B and 3510-2D and am not able to ascertain any change in the regulations that require BWF to file EPA Form 3510-2D since EPA Form 3510-1 (8-90) was current to the present.

In addition, EPA Form 3510-2D is entitled “New Manufacturing, Commercial, Mining, and Silvicultural Operations That Have Not Yet Commenced Discharge of Process Wastewater”. The Instructions to USEPA form 3510-2D state that “[y]ou must complete Form 2D if you answered “Yes” to Item 1.2.3 on Form 1—that is, if you are a new manufacturing, commercial, mining, or silvicultural facility that has yet to commence discharge of process wastewater.” Application Instructions, USEPA Form 3510-2D, Page 2D-1.

The BWF’s Concentrated Aquatic Animal Production Facility, to wit, the submerged net fish pens that hold steelhead trout in the Gulf of Maine do not create, use or discharge process wastewater. “Process Wastewater” is defined by USEPA as being “. . . any water which, during manufacturing or processing, comes in direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.” USEPA, Application Form 1, General Information, NPDES Permitting Program, Glossary, Page 1-14.

A “Concentrated Aquatic Animal Production Facility” does not engage in “manufacturing or processing” as required under the definition of “Process Wastewater”. It is instructive to note that the very definition of a Concentrated Aquatic Animal Production Facility uses the terms “contains, grows, or holds aquatic animals. . . .” USEPA, Application Form 1, General Information, NPDES Permitting Program, Glossary, Page 1-10. It does not use the terms “manufacturing or processing” or even “Process Wastewater” when speaking of, and defining the phrase, Concentrated Aquatic Animal Production Facility. It is for this reason why USEPA Form 3510-1 (8-90) excluded Concentrated Aquatic

² BWF filed an earlier EPA Form 3510-1 (8-90) for a single submerged net fish pen in New Hampshire State waters and made this same response to the same question on the Form. USEPA never objected to BWF making the same selection at that time.

Animal Production Facility from the requirement of an applicant to file an USEPA Form 3510-2D. EPA Form 3510-1 (8-90)(Specific Question D).³

Further, if one examines the content of EPA Form 3510-2D, it is requesting information that does not apply to BWF's submerged net fish pens that "contains, grows or holds" steelhead trout. As an example, Section 1 of EPA Form 3510-2D seeks information about the location of "outfalls". A submerged fish pen does not have any "outfalls". As such, Section 1 of EPA Form 3510-2D is not applicable to BWF.

Section 2 of EPA Form 3510-2D inquires as to the date of discharge out of the outfall. As the submerged net fish pens have no outfalls, there will be no discharge out of the outfalls and therefore, there will be no date that a discharge will flow out of the outfalls. As such, Section 2 of EPA Form 3510-2D is not applicable to BWF.

Section 3 of EPA Form 3510-2D seeks information on the treatment process of the effluent that flows through the outfall. A submerged net fish pen has no "treatment process" as requested by Section 3 of EPA Form 3510-2D. As such, Section 3 of EPA Form 3510-2D is not applicable to BWF.

Section 4 of EPA Form 3510-2D seeks a line drawing ". . . that shows the water flow through your facility with a water balance? (See instructions for drawing requirements. See Exhibit 2D-2 at end of instructions for example.)" EPA Form 3510-2D, Section 4. The only line drawing that a submerged fish net pen will show is water that flows through a hole in a net on one side of the fish pen, then it travels through the fish pen and exists through another hole in fish pen net on the other side of the fish pen. Further, there is no need to conduct a "water balance" calculation as all the water that enters the submerged fish pen through the netting, exits the submerged fish pen without any treatment process. Thus, the process is naturally balanced. As such, Section 4 of EPA Form 3510-2D is not applicable to BWF.

Section 5 of EPA Form 3510-2D seeks to know whether there is intermittent or seasonal flows other than those that are describe in Section 1. As the submerged fish pens are

³ Other types of animals that are grown in high concentrations in the ocean, to wit, long line mussel cultivation and oyster racks that are both suspended in the water column, do not require an EPA 3510-2D form and may not even require a NPDES permit.

always located underwater in the Gulf of Maine, there will be no intermittent or seasonal flows. As such, Section 5 of EPA Form 3510-2D is not applicable to BWF.

Section 6 of EPA Form 3510-2D inquires whether any effluent limitation guidelines (ELGs) promulgated under Section 304 of the Clean Water Act (CWA) apply to BWF's submerged fish pens. All ELGs promulgated by EPA appear in the Federal Register and are published annually in 40 CFR Subchapter N. An ELG applies if BWF has any operations contributing process wastewater in any subcategory covered by New Source Performance Standards. Instructions, Form 3510-2D, Section 6, Page 2D-2. As stated above, the submerged fish pens have no process wastewater. As such, Section 6 of EPA Form 3510-2D is not applicable to BWF.

Section 7 of EPA Form 3510-2D requires BWF to report estimated flow data for the parameters and pollutants listed in Tables A through E, located at the end of Form 2D. Complete a set of tables (Tables A through E) for each outfall at BWF's facility. Be sure to note the EPA Identification Number, facility name, and outfall number at the top of each table page and any associated attachments. Instructions, EPA Form 3510-2D, Section 7, Page 2D-2. The BWF submerged net fish pens do not have any outfalls. As such, Section 7 of EPA Form 3510-2D is not applicable to BWF.

Section 8 of EPA Form 3510-2D seeks an engineering report on "any technical evaluations have been conducted of your wastewater treatment . . . " EPA Form 3510-2D, Section 8.1, Page 2D-5. As there is no wastewater treatment associated with the submerged net fish pens, Section 8 of EPA Form 3510-2D is not applicable to BWF.

Sections 9 and 10 of EPA Form 3510-2D are also not applicable to BWF as they provide an opportunity for an applicant to provide any other information and to complete a checklist for the Form. As such, Sections 9 & 10 of EPA Form 3510-2D are not applicable to BWF.

Thank you for the opportunity to respond to the USEPA's comments that are listed above. It is my hope that these responses allow the USEPA to deem BWF's application complete. If you have additional questions or comments regarding BWF's pending

application, please feel free to contact me. You can contact me by email at scott@bwfisheries.com or by calling me at (603) 860-3111.

Regards,

/s/ -- Scott W. Flood -- /s/

Scott W. Flood, ceo